

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 01-29**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Application of Tennessee's franchise, excise tax law to a single member limited liability company ("SMLLC") that is doing business in Tennessee and is disregarded for federal income tax purposes where the SMLLC is wholly-owned by another disregarded single member limited liability company that is, in turn, wholly-owned by a non-Tennessee corporation that serves as a holding company for a number of single member limited liability companies, each of which are disregarded for federal income tax purposes.

**SCOPE**

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

**FACTS**

Company X is a non-Tennessee corporation that serves as the holding company for a number of single member limited liability companies, each of which are disregarded for federal income tax purposes. Company X is structured such that one single member limited liability company owns several other single member limited liability companies that are engaged in the business of manufacturing and selling various food products at wholesale. These second tier limited liability companies are hereinafter referred collectively as the "operating subsidiaries".

One of the operating subsidiaries is a single member limited liability company (hereinafter “SMLLC Y”) that is doing business in Tennessee and is disregarded for federal income tax purposes. SMLLC Y is wholly owned by another single member limited liability company (hereinafter “SMLLC Z”) that is, in turn, wholly owned by Company X.

## **QUESTION**

Will a single member limited liability company that is disregarded for federal income tax purposes be disregarded for Tennessee franchise, excise tax purposes if it is wholly owned by another disregarded single member limited liability company that is, in turn owned by a corporation?

## **RULING**

Yes.

## **ANALYSIS**

With respect to an entity’s classification for Tennessee excise tax purposes, T.C.A. § 67-4-2007(d) provides as follows:

... a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes, and subject to tax in accordance with this part. Notwithstanding any provision of law to the contrary, entities that are disregarded for federal income tax purposes, except for limited liability companies whose single member is a corporation, shall not be disregarded for Tennessee excise tax purposes.

T.C.A. §§ 67-4-2007(d).<sup>1</sup>

Thus, only those SMLLC’s that are disregarded for federal income tax purposes and have a corporation as their sole member will be disregarded for Tennessee franchise, excise tax purposes. The apparent legislative intent of T.C.A. §§ 67-4-2007(d) and 67-4-2106(c) was to make it clear that an entity with a single owner, such as an S Corporation or a limited liability company (“LLC”), that elects to be disregarded for federal income tax purposes will not be disregarded for Tennessee franchise, excise tax purposes unless the entity’s single owner is a corporation. Otherwise, a disregarded LLC or S Corporation solely owned by a non-taxable general partnership or an individual could escape Tennessee franchise, excise taxation.

For federal income tax purposes, SMLLC Z has elected under Treas. Reg. 301.7701-3(a) and (b) (1997)<sup>2</sup> to be disregarded as an entity separate from its owner, Corporation X.

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<sup>1</sup> T.C.A. § 67-4-2106(c) is the franchise tax provision that mirrors the excise tax provision.

<sup>2</sup> Treas. Reg. 301.7701-3(a) and (b) (1997), set forth in part below, provides as follows with regard to the classification of certain business entities for federal tax purposes:

Since SMLLC Z will be disregarded and have as its only member Corporation X, SMLLC Z will be disregarded for Tennessee franchise, excise tax purposes as well. *See* T.C.A. §§ 67-4-2007(d) and 67-4-2106(c).

SMLLC Y has also elected under Treas. Reg. 301.7701-3(a) and (b) to be disregarded as an entity separate from its owner, SMLLC Z. Since SMLLC Z will be disregarded, SMLLC Y's sole owner for federal income tax purposes will be Corporation X. Therefore, in accordance with T.C.A. §§ 67-4-2007(d) and 67-4-2106(c), SMLLC Y will also be disregarded for purposes of Tennessee franchise, excise tax.

Corporation X will be required to include SMLLC Z and SMLLC Y as divisions in its Tennessee franchise, excise tax return.

Steven B. McCloud  
Tax Counsel

APPROVED: Ruth E. Johnson  
Commissioner

DATE: November 6, 2001

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(a) In general. A business entity that is not classified as a corporation under 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of this section provides a default classification for an eligible entity that does not make an election.

(b) Classification of eligible entities that do not file an election--

(1) Domestic eligible entities. Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a domestic eligible entity is--

(i) A partnership if it has two or more members; or

(ii) Disregarded as an entity separate from its owner if it has a single owner.

(2) Foreign eligible entities--

(i) In general. Except as provided in paragraph (b)(3) of this section, unless the entity elects otherwise, a foreign eligible entity is--

(A) A partnership if it has two or more members and at least one member does not have limited liability;

(B) An association if all members have limited liability; or

(C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Treas. Reg. 301.7701-3(a) and (b) (1997).